

### **REMARKS/ARGUMENTS**

Claims 1-40 were pending in this application. In response to the Restriction Requirement dated February 12, 2008, Applicants elected claims 1-6 and 25-32. Accordingly, claims 33-40 were withdrawn as they are directed to a non-elected invention. In the current Office Action, claims 1-6 and 25-32 have been rejected.

In response to the Section 112 rejections (see below), claims 4, 6 and 32 have been amended. Upon entry of this amendment, claims 1-6 and 25-32 are pending.

Applicant respectfully requests reconsideration and withdrawal of the rejections in view of the following remarks.

#### **I.) Claim Rejections – 35 USC § 112**

A.) Claim 4 has been rejected under 35 U.S.C., second paragraph, as being indefinite. The Office Action alleges that it is not clear from the specification what a sponge like material structure is. In response, claim 4 has been amended to define the sponge like material as a foam. Support for a foam is found in the specification as originally filed on page 9, line 3 and page 18, line 9. This claim amendment should obviate the rejection.

B.) Claims 5 and 31 have been rejected under 35 U.S.C 112., second paragraph, as being indefinite. The Office Action alleges that it is not clear how the nonwoven material is a three dimensional structure. In response, Applicants argue that when fibers are bonded together to form a nonwoven, the resultant structure is three-dimensional by nature. The three-dimensional nature of the nonwoven material is clearly displayed in Figure 1 of the specification. Owing to the three-dimensional structure of the nonwoven substrate, the substrate contains various pores in which an active agent can be physically entrapped. The specification clearly points out how the active agent (i.e. iodinated resin) can be physically entrapped within the three-dimensional matrix of the nonwoven material. Hence, Applicants do not comprehend the rejection. Applicants respectfully request that the 112, second paragraph rejections of claims 5 and 31 be removed.

C.) Claims 6 and 32 have been rejected under 35 U.S.C 112., second paragraph, as being indefinite. The Office Action alleges that it is unclear what the meaning of size suitable is. In response, Applicants have removed this limitation from the claims, thus obviating the rejection.

## II.) Claim Rejections – 35 USC § 103

Claims 1-6 and 25-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Messier (U.S. 6,224,655) in view of Pike et al (U.S. 5,873,968). The Office Action alleges that Messier teaches the claimed protective media but does not teach that the filter is a dielectric carrier and has an electrostatic charge. However, the Office Action contends that Pike teaches a filter medium having an electret microfiber web. Hence, the Office Action concludes that “Pike presents a finding that one of ordinary skill in the art could have substituted the electrostatically charged filter in the biostatic filter and the results of the combination would have been predictable.” Applicants respectfully disagree.

Messier teaches a filter with incorporated iodinated resin. Messier does not contemplate applying an electret to the filter media. Pike discloses applying an electret to a filter medium, particularly a nonwoven material comprised of a laminate of a spunbond web and a microfiber web. Pike does not suggest or provide any motivation for adding an antimicrobial agent to the nonwoven electret.

Applicants believe that the Examiner is using impermissible hindsight based on the Applicant’s disclosure in establishing this section 103 rejection. Applicants remind the Examiner that it is impermissible to engage in a hindsight reconstruction of the claimed invention, using the Applicant’s structure as a template, and selecting elements from references to fill in the gaps. *Interconnect Planning*, 744 F.2d 1132, 1143 (Fed. Cir. 1985).

Consequently, withdrawal of the Section 103 rejection is earnestly requested.

**CONCLUSION**

Based on the foregoing amendments and remarks, favorable consideration and allowance of all of the claims now present in the application are respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment, to Goodwin Procter LLP Deposit Account No. 06-0923.

Respectfully submitted for Applicant,



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